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Town of Durham

JUL 18 2023

Planning, Zoning
and Assessing

Fee = \$352
Check # 5349



TOWN OF DURHAM
ZONING BOARD OF ADJUSTMENT
8 NEWMARKET RD
DURHAM, NH 03824
PHONE: 603/868-8064
www.ci.durham.nh.us

VARIANCE

Prior to seeking a variance, the property owner must have been denied a building permit by the Building Inspector or denied an approval by the Planning Board.

Name of Applicant Asher and Callie Langton

Address: 14 Ross Road

Phone # 925-579-4020 Email: callie.langton@gmail.com

Owner of Property Concerned Same
(If same as above, write "Same")

Address: Same
(If same as above, write "Same")

Location of Property: 14 Ross Road
(Street & Number)

Tax Map & Lot number 232-62

A Variance is requested from Article(s) XII.1 Section(s) 175-54 of the Zoning Ordinance to permit:

1. A 10x6 mudroom on the front of the house, where a prior front door existed.
2. A deck off the back of the house that brings that entrance to code and is on the same footprint as current patio.
3. A side entrance and landing.

All applications must include a statement explaining how the applicant meets each of the five (5) statutory requirements for granting a variance, (A) through (E), which are found on page 2. (See page 3 for guidance.) The Zoning Board of Adjustment may consider the variance application incomplete if these five statements have not been addressed. In addition all applications must be accompanied by adequate plans and exhibits.

Please see attached letter and exhibits for all required information.

RSA 674:33 Powers of the Zoning Board of Adjustment:

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I(a)The zoning board of adjustment shall have the power to:

(1) Hear and decide appeals if it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and

(2) Authorize, upon appeal in specific cases, a **variance** from the terms of the zoning ordinance if:

(A) The variance will not be contrary to the public interest;

(B) The spirit of the ordinance is observed;

(C) Substantial justice is done;

(D) The values of surrounding properties are not diminished; and

(E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(b)(1) For purposes of this subparagraph I(a)(2)(E), "**unnecessary hardship**" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(B) The proposed use is a reasonable one.

(2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

(3)The definition of "unnecessary hardship" set forth in subparagraphs (1) and (2) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

EXPIRATION PERIOD FOR VARIANCES

Any Variances granted shall be valid if exercised within **2 years** from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.

VARIANCE CRITERIA GUIDELINES

<p>Statutory Requirements (RSA 674:33, I(b))</p> <p><i>APPLICANT MUST SATISFY ALL OF THE FOLLOWING</i></p>	<p>Explanation</p>
<p>1. The variance is not contrary to the public interest.</p>	<p>The proposed use must not conflict with the explicit or implicit purpose of the ordinance, and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”</p>
<p>2. The spirit of the ordinance is observed.</p>	<p>As it is in the public’s interest to uphold the spirit of the ordinance, these two criteria are related.</p>
<p>3. Substantial justice is done.</p>	<p>The benefit to the applicant should not be outweighed by harm to the general public.</p>
<p>4. The values of surrounding properties are not diminished.</p>	<p>Expert testimony on this question is not conclusive, but cannot be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.</p>
<p>5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in either of two ways:</p> <p>First is to show that because of special condition of the property that distinguish it from other properties in the area:</p> <p>(a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and</p> <p>(b) The proposed use is a reasonable one.</p> <p><i>Alternatively</i>, unnecessary hardship exists if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.</p>	<p>The applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other land in the area.</p> <p>(a) Determine the purpose of the zoning restriction in question. The applicant must establish that, because of the special conditions of the property, the restriction, as applied to the property, does not serve that purpose in a “fair and substantial” way.</p> <p>(b) The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood.</p> <p><i>Alternatively</i>, the applicant can satisfy the unnecessary hardship requirement by establishing that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.</p>

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Asher and Callie Langton
14 Ross Road
Durham, NH 03824

July 18, 2023

Town Of Durham Zoning Board of Adjustment
8 Newmarket Rd
Durham, NH 03824

Dear Durham Zoning Board of Adjustment,

We write to submit a petition for a variance for 14 Ross Road, from Article XII.1, Section 175-54 (dimensional standards) of the Durham Zoning Ordinance, to permit construction of a front entry, back deck, and side door and landing close to or within the side setback. With the exception of a single 3' landing, none of the projects should extend past our home and decrease the side setback.

In Spring 2022, at peak real estate boom, we bought the one house in Durham no one wanted. It is the neighborhood ugly duckling, and the previous owner had a penchant for unsafe DIY (see Exhibits A and B for examples). In bringing the house up to current standards, we have planned three small projects that we have come to find out are within or close to the currently required side setback for rural districts (see Exhibit C for rough distance estimates to the property line for each project). An area variance is needed to enable our proposed uses of the property given that the house was built within 50' of the side setback, thus any improvements on one side of the original house violate setback rules. We cannot achieve the benefits of the projects proposed below without this area variance.

We address the five required criteria for approving a variance below, and details about each small project follow:

A) The variance will not be contrary to the public interest.

The variance is not contrary to the public interest and will provide benefits in that entrances and pathways will be brought up to current safety standards, the home will better conform to the expected quality of construction in the neighborhood, and improvements will increase the property value. We have reached out to the abutting homeowner and trustees of the abutting conservation land and will ensure that these changes do not harm the enjoyment of these properties.

B) The spirit of the ordinance is observed.

Our understanding is that the spirit of this ordinance is to preserve the natural and scenic environment of the district. Housing must be designed so the character can be maintained, and the scenic qualities can be protected. All of our improvements will preserve the current character of the neighborhood and will increase the scenic quality considering the current poor condition of the

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exterior of our home. We will use dark brown for all decking, natural stone for stairs and pathway, and other materials that blend into nature and preserve the beauty of the neighborhood.

C) *Substantial justice is done.*

There is no harm to the general public, and the general public will benefit from these safety and physical improvements to the home. Based on other recent (2020-2022) Durham variance approvals, other homeowners have received similar relief from the ordinance.

D) *The values of surrounding properties are not diminished.*

Our home is currently the one diminishing property values, and these projects will increase property values by bringing our “ugly duckling” house in line with the rest of the neighborhood. During a time when other homes on the market were receiving 30+ offers in Spring 2022, we were the only offer on this home, showing that others also viewed this property negatively in its current state.

E) *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*

A variance is made necessary by the unique physical characteristics of our lot and home location on that lot. As most of the homes in our neighborhood do not share the same proximity to their side yard setbacks, the hardship imposed is not shared equally by all property owners in the area and results in an unnecessary hardship for us. We cannot make any substantial improvements to the primary part of our home without encountering the need for an area variance, while others in our neighborhood can add landings, decks, and make entrance improvements without a variance. Making small improvements to our home including a back deck, door landing, and replacing the original front entrance are reasonable uses of the property and there is no fair and substantial relationship to the public purposes of this ordinance and the projects proposed here. There are no other reasonably feasible methods of accommodating this proposed use of our property.

Project Details:

1. **Front 10x6 Mudroom and Entrance.** The previous owner removed the front door to our cape style house, and created an alternate side entrance, building her own stairs and path in the process (see Exhibits A and B). None of it is to code, the stairs are crooked and different heights, the path is all pavers despite a steep grade, and the railings are rickety. Both the path and current entry stairs are dangerous, with our mail carrier and our elderly parents slipping or tripping multiple times. One of our regular mail carriers will honk repeatedly in our driveway, annoying everyone, as he refuses to go up the current path and stairs to get signatures. For this project, we seek to restore the *original location* of the front door of the house and add a small mudroom to change the drainage path off the roof and avoid the previous issues the original front door faced of significant water entry into the home during storms (see Exhibit A). The project also includes a new pathway, adding steps that bring it to current safety standards. Using our own measurements, the closest corner of the proposed mudroom will be approximately 52’ away from our side setback, but it was too close to 50’ for the building inspector to approve as-is. Additionally, that same corner would be 12’ further away from said setback than the side of our existing house, does not encroach on anyone else’s property, and will bring much-needed safety improvements and

curb appeal back. See Exhibits A and C for proposed location on the front of our home and how it relates to the side closest to the setback in question.

2. **Back Deck.** We currently have crooked DIY'd stairs with no landing, a patio, and an old unpermitted pergola with footings in the back of our house (see Exhibit D). We plan to replace it all with a deck on the same original footprint. Our current back stairs are dangerous and not to code, with no landing and no handrails. The pergola's poor design directs rain at our door and the steps, making the stairs extremely unsafe during icy conditions, and causing maintenance issues. Our new deck will exceed code safety rules, including a railing despite being less than 30" off the ground. We have no rear neighbors, and the new composite deck will be more pleasant to look at for our side neighbor compared to the DIY'd paver deck and old pergola that are currently there. This project does not further encroach on the side setback, as we are replacing the existing patio and pergola area with a deck, and it will not extend past the side of our existing home. See Exhibits D and C for proposed location on the back of our home and how it relates to the side closest to the setback in question.
3. **Side Door and Landing.** Our property backs up to a pond and stream, and we have created a small, fenced area on the side of our house to provide peace of mind and safety for our pets and small children who visit frequently. We would like to install a side door and landing replacing an existing large window exiting into the fenced area. Due to the characteristics of our lot, this was the only feasible location for a fenced area. This door and landing are critical for supervision of children and pets and will not substantially change the footprint of our home. Our elderly parents frequently dog sit for our large dogs, and having a fenced area with direct access to the home would make that activity much safer for everyone. This project will only minimally impact the setback, decreasing it by just 3 feet to approximately 41' (see Exhibit C for estimates). The landing faces a neighbor's backyard and is not easily visible from their home due to angles and tree cover. The existing window is approximately 5 feet tall, minimally changing the exterior of the house itself by changing it to a door. See Exhibits D and C for proposed location on the back of our home and how it relates to the side closest to the setback in question.

Thank you in advance for your time and consideration of this variance application, we are happy to make ourselves available at your convenience to answer any additional questions. Our builder, Josiah Zoller, is also available at 603-303-4263 should you need to discuss more technical details of the construction.

Sincerely,

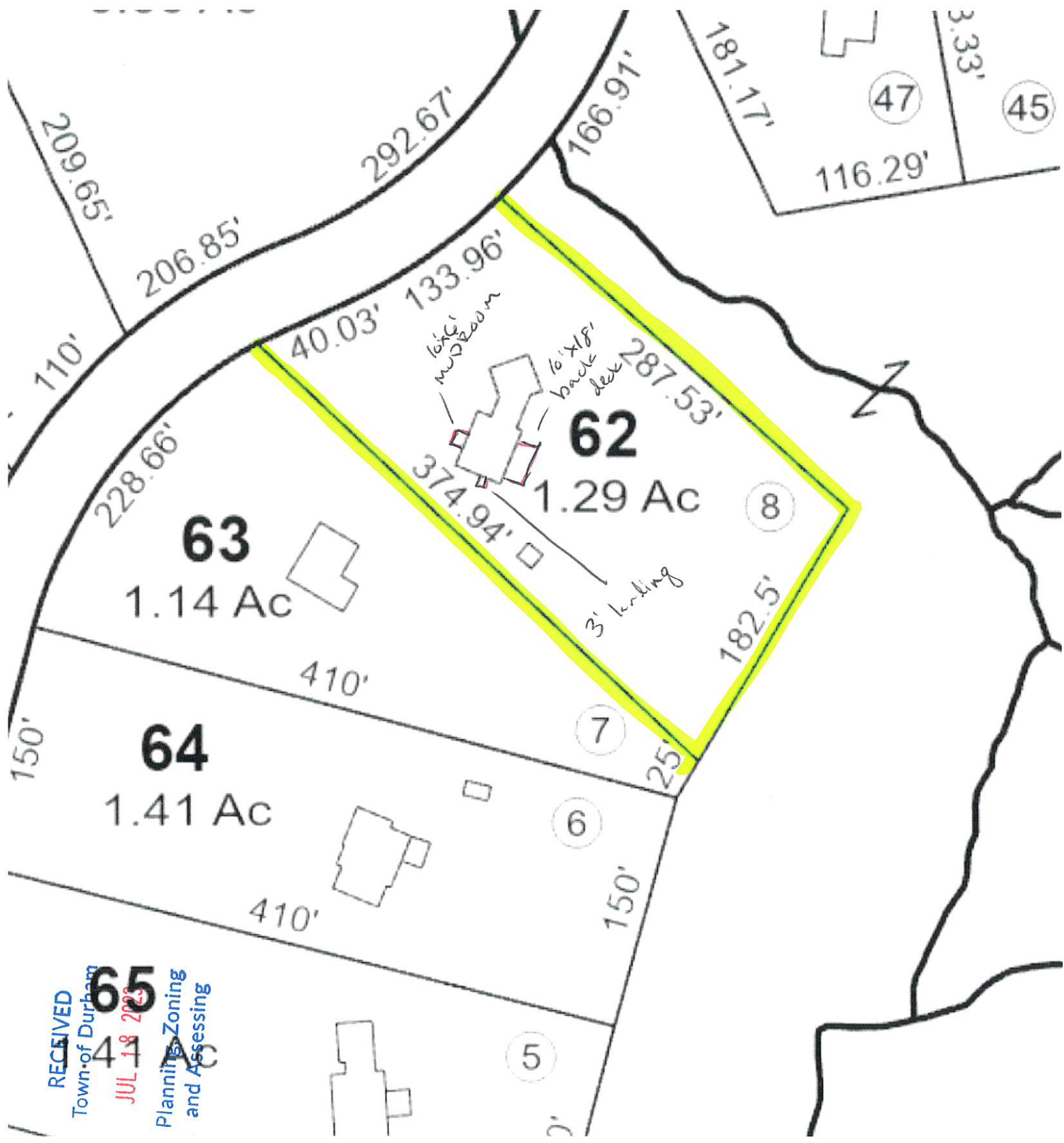


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65
 1.41 Ac

63
 1.14 Ac

64
 1.41 Ac

62
 1.29 Ac

large museum

16' x 18' back deck

3' landing



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Langton Variance Application Abutting Properties
14 Ross Rd
July 18, 2023

1. 12 Ross Rd, 232-63, Owner Brian W. Gollwitzer
2. Stagecoach Open Space, 232-66, Owner Stagecoach Farms Homeowners Association
Legal Mailing Address:
23 Ross Rd, Durham, NH, 03824, USA
3. Stagecoach Open Space, 232-63, Owner Stagecoach Farms Homeowners Association
Legal Mailing Address: 23 Ross Rd, Durham, NH, 03824, USA



Where house used to
Pool due to poor design +
door directly on house



Exhibit A



Current Crooked DIY
Shirts + palm.
If approved, will be consid.
and + palm removed

Exhibit B



KAT
MRS
1932
PICK 1
LOT

52'

51'

Exhibit C



Proposed side
entrance
↓

Attached
to house
↓

Concrete
Footings
↑